

transmitting information corresponding to the data to a device; and accepting a request for an exception to create or modify a term of the at least one tender,

wherein the complex multi-variable commodity is a particular commodity whose price determination is based on a variation of a plurality of variable characteristics regarding a physical characteristic of the particular commodity.

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#### REMARKS

#### INTRODUCTION

Claims 2, 3, 7, 12-14, 18, 25, 27, 30-34, and 36 have been canceled, without prejudice, and therefore claims 1, 4-6, 8-11, 15-17, 19-24, 26, and 35 are currently pending. Claims 1, 11, 17, 26, and 35 have been amended. No new matter has been added.

#### RESPONSE TO THE REJECTION OF CLAIM 1, 5, 7, 11, 14, 17, 18, 20, 35-37, 30-32, 35, and 36 UNDER 35 U.S.C. §112, ¶2

Claims 1, 5, 7, 11, 14, 17, 18, 20, 35-37, 30-32, 35, and 36 have been rejected under 35 U.S.C. §112, paragraph 2, as being indefinite on the grounds that the term "tender" is unclear.

It is submitted that the specification provides clear guidance as to the meaning of the term "tender" at least on (pre-amended) page 11, lines 3 to 6 which states:

[The] user must first decide if the tender to be posted is for the purchase or sale of a commodity (step 302). Both types of the tender are possible which allow the sellers and the buyers to post the tenders on the System. The tender initiator should determine the type of commodity the tender covers (step 303).

According to this passage, it is clear that a tender is an offer for the purchase or of the sale of a particular type of commodity in an auction environment. However,

to clarify the term still further the specification has been amended to include an explicit definition of the term consistent with the above-quoted description.

The Office Action further asserts that claims 7, 14, 18, and 27 are indefinite on the grounds that the term "when the processing device enables a user to at least one of request and generate an exception to at least one of create and modify a term of the at least one tender" is unclear. Each of these claims has been canceled, without prejudice, and their features have been incorporated into the respective independent claims upon which each depends. The above-quoted term has been modified in each of these independent claims to "the processing device enables a user to request an exception to create or modify a term of the at least one tender". It is believed that this modification clarifies this term.

As the grounds for the indefiniteness rejection have been obviated, withdrawal of the indefiniteness rejection of claims 1, 5, 7, 11, 14, 17, 18, 20, 35-37, 30-32, 35, and 36 is respectfully requested.

**RESPONSE TO THE REJECTION OF CLAIMS 1-4, 12, 13, 17, 26, 35, and 36**

**UNDER 35 U.S.C. §103(a)**

Claims 1-4, 12, 13, 17, 26, 35, and 36 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,285,383 to Lindsey et al. (Lindsey).

Independent claim 1 recites a system for utilizing at least one tender that includes, *inter alia*, a processing device transmitting information corresponding to the data, wherein the at least one tender is provided for a complex multi-variable commodity, the processing device further enabling a user to request an exception to create or modify a term of the at least one tender, wherein the complex multi-variable commodity is a particular commodity whose price determination is based on a variation of a plurality of variable characteristics regarding a physical characteristic of the particular commodity.

At cols. 31-35, the Lindsey reference refers to a TELCOT system which allows buyers to bid on a blind basis for cotton, or Firm offers are placed. Lindsey also refers to a Counter Offer program provided by the TELCOT system whereby buyers unwilling to pay the Firm Offer price can notify producers of the price they are

willing to pay for a lot of cotton already offered for sale. See Lindsey, col. 32, lines 45-52. While this Counter Offer program provides buyers with an opportunity to effect the resulting transaction price, it is not equivalent to "enabling a user to request an exception to create or modify a term of the at least one tender" as claimed for the reasons: a) that the counter offer is not a request that the tenderer has the option of refusing, and also b) that the counter offer is not an exception to create or modify the terms of a tender.

As stated in the specification,

exceptions can be changes ***to the conditions or terms of the established tender.*** The original tender terms and conditions can be set by the tender initiator when the tender is first posted. ***The exception handling process is provided to accommodate the tender recipients who require changes to be made in the established tender.*** This process allows particular exceptions to be selected once they are deemed to be permissible for an additional cost. In addition, the process according to the present invention then allows all tender recipients to bid equally on the established tender with the winner being able to execute the accepted exceptions for an additional stipulated (or predetermined) price after winning the tender.

(Specification, page 17, lines 7-16) (emphasis added).

The above-quoted explanation of exceptions shows that the TELCOT system of Lindsey does not refer to, disclose or in any way suggest an exception to create or modify a term of the at least one tender. The Counter Offer program of the TELCOT system does not provide for modifying the conditions or terms of the originally submitted tender, but merely provides for a "counter" tender.

For at least these reasons, it is respectfully submitted that Lindsey does not disclose or suggest each of the features of independent claim 1, or of 4-6 and 8-10, which depend from claim 1, which are therefore patentable over Lindsey.

Independent claim 17, as amended, recites a system including a processing device that transmits information corresponding to the data, and enables a user to request an exception to create or modify a term of at least one tender. Claim 17, and dependent claims 19-23, are therefore also patentable over Lindsey for at least the reasons given above with respect to claim 1.

Likewise, as independent claim 26, as amended, recites a method including the step of accepting a request for an exception to create or modify a term of the at least one tender, it is also patentable over Lindsey.

Independent claim 35 recites a set of instructions residing in a storage medium including instructions for accepting a request for an exception to create or modify a term of the at least one tender. Therefore, independent claim 35 is also patentable over Lindsey for the reasons given above.

Withdrawal of the rejection of claims 1-4, 12, 13, 17, 26, 35, and 36 under 35 U.S.C. §103(a) is therefore respectfully requested.

**RESPONSE TO THE REJECTION OF CLAIMS 5-11, 14-16, 18-24, 27-29, and 31-34 UNDER 35 U.S.C. §103(a)**

Claims 5-11, 14-16, 18-24, 27-29, and 31-34 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Lindsey in view of United States Patent No. 5,950,178 to Borgato (Borgato).

Claims 7, 14, 18, and 27 have been canceled, without prejudice, and therefore the rejection is moot with respect to those claims.

Claims 5, 6, and 8-10 depend from and incorporate the features of independent claim 1.

The Borgato reference concerns a system for matching offers and bids for diamonds. Within this system, a host processor stores the details of each diamond offered for sale (including an offer price), and arranges the offers in a matrix according to diamond characteristics. A buyer may then select diamonds for purchase according to their characteristics and if so desired, enter a bid price for a particular diamond. If a bid price matches an offer price for a particular diamond, a sale transaction occurs. See Borgato, col. 2, line 49 to col. 3, line 23. However, Borgato does not disclose or suggest the host processor enables a user to request an exception to create or modify a term of the at least one tender as recited in claim 1. In fact, Borgato does not even allude to the possibility that a prospective buyer might be able to vary the terms of the seller's tender offer. See, e.g. Borgato, cols. 12-15 (discussing entering of a bid for purchase without any reference to exceptions from terms of the offers listed). Accordingly, Borgato fails to cure the deficiencies of

the Lindsey reference noted above.

For at least these reasons, it is submitted that claims 5, 6, and 8-10 are patentable over the references relied upon.

As independent claim 11, as amended, recites a method including the step of accepting user input for generating an exception create or modify a term of at least one tender, claim 11, and claims 15 and 16, which depend from claim 11, are also patentable over the references relied upon.

Claims 18-24 depend from independent claim 17. As noted above, the Lindsey reference fails to disclose each of the features of claim 17. As Borgato does not cure the deficiencies of the primary Lindsey reference, claims 18-24 are equally patentable over the references relied upon.

Claims 27-29 depend from independent claim 26. As noted above, the Lindsey reference fails to disclose each of the features of claim 26. As Borgato does not cure the deficiencies of the primary Lindsey reference, claims 27-29 are equally patentable over the references relied upon.

Withdrawal of the rejection of claims 5-11, 14-16, 18-24, 27-29, and 31-34 under 35 U.S.C. §103(a) is therefore respectfully requested.

#### **RESPONSE TO THE REJECTION OF CLAIM 30 UNDER 35 U.S.C. §102(e)**

Claim 30 has been rejected under 35 U.S.C. §102(e) as anticipated by Borgato.

Claim 30 has been canceled, without prejudice. The rejection has therefore been rendered moot.

**CONCLUSION**

It is respectfully submitted that the foregoing amendments and remarks demonstrate that the application is in clear condition for allowance and prompt notification thereof is solicited. The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

The Office is authorized to charge any fees associated with this Amendment to Kenyon & Kenyon Deposit Account No. 11-0600.

Respectfully Submitted,

KENYON & KENYON

Dated: 4/22/03

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**Version with Markings to show changes made**

**IN THE SPECIFICATION:**

Please amend the first full paragraph on page 11 of the Specification as follows:

--A "tender" as defined herein, is the initial provision of an offer for a purchase or sale of commodity for use in an auction, accompanied by qualifying information entered with the offer as described below. When the user (i.e., the tender initiator) opts to post the tender, a process is begun (step 301) as provided in the embodiment of the system and method of the present invention, and shown in Figures 3A and 3B. This user must first decide if the tender to be posted is for the purchase or sale of a commodity (step 302). Both types of the tender are possible which allow the sellers and the buyers to post the tenders on the System. The tender initiator should determine the type of commodity the tender covers (step 303). In the embodiment shown in Figures 3A and 3B, this selection is made from prerefined petroleum products. The tender initiator may also select a tender identification number to identify the tender (step 304). This identification number should be unique for all of the tenders or for each user. It is also possible for a user identification code, acronym, or name followed by the tender identification number to be used to uniquely identify the tender. Alternatively, the tender identification number can be automatically generated by the System.--.

**IN THE CLAIMS:**

Please amend the following claims:

1. (Amended) A system for utilizing at least one tender, comprising:

a storage device storing data which relates to the at least one tender;

and

a processing device transmitting information corresponding to the data, wherein the at least one tender is provided for a complex multi-variable commodity, the processing device further enabling a user to request an

exception to create or modify a term of the at least one tender,  
wherein the complex multi-variable commodity is a particular  
commodity whose price determination is based on a variation of a plurality of  
variable characteristics regarding a physical characteristic of the particular  
commodity.

11. (Amended) A method for utilizing at least one tender, comprising the steps of:
  - receiving data for the at least one tender, the at least one tender being provided for a complex multi-variable commodity; [and]
  - transmitting information corresponding to the data to a device; and
  - accepting user input for generating an exception to create or modify a  
term of the at least one tender,  
wherein the complex multi-variable commodity is a particular  
commodity whose price determination is based on a variation of a plurality of  
variable characteristics regarding a physical characteristic of the particular  
commodity.
  - wherein at least one variable characteristic is a physical characteristic of a particular commodity.

17. (Amended) A system for utilizing at least one tender, comprising:
  - a storage device storing data which relates to the at least one tender;
  - and
  - a processing device transmitting information corresponding to the data,  
and enabling a user to request an exception to create or modify a term of the  
at least one tender,  
wherein the at least one tender includes at least one of a term and a condition, and  
wherein the term and the condition are capable of being modified.

26. (Amended) A method for utilizing at least one tender, comprising the steps of:
  - receiving data for the at least one tender; [and]
  - transmitting information corresponding to the data; and

accepting a request for an exception to create or modify a term of the  
at least one tender,

wherein the at least one tender includes at least one of a term and a condition, and

wherein the term and the condition are capable of being modified.

35. (Amended) A set of instructions residing in a storage medium, the set of instructions capable of being executed by a processor to implement a method for utilizing at least one tender, the method comprising the steps of:

receiving data for the at least one tender, the at least one tender being provided for a complex multi-variable commodity; [and]

transmitting information corresponding to the data to a device; and  
accepting a request for an exception to create or modify a term of the  
at least one tender,

wherein the complex multi-variable commodity is a particular  
commodity whose price determination is based on a variation of a plurality of  
variable characteristics regarding a physical characteristic of the particular  
commodity.